

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1843 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMCHANDRA MATHURLAL BHAVAN

Versus

JAMNADAS MOHANLAL DESAI

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Appearance:

MR HB SHAH for Petitioner

MR JIVANLAL G SHAH for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/12/97

ORAL JUDGEMENT

This Revision Application under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Act of 1947') is filed against the judgment passed by the learned Asstt. Extra Judge, Baroda, dated 8.11.1983 whereby the learned Judge confirmed the judgment and decree passed by the Court of

Addl. Judge, Small Causes Court, Vadodara in Rent Suit No.604/77. The suit premises was leased out to one Chanchalben, widow of one Rameshchandra Nanchand for residential purpose. The said premises were used by the said Chanchalben for stitching work. The premises consists of one room. She resided in the suit premises till her death in August 1977. She had no issue or any other heir. According to the plaintiff, the present defendant entered into the said premises unlawfully after the death of Chanchalben and claims to be the statutory tenant of the said premises. The plaintiff sought decree for recovery of possession on various grounds including the ground of bonafide necessity. The case of the defendant is that Chanchalben had no son or relatives and as such he was looking after her till her death and was also residing in the suit premises. It is also the case of the defendant that the said Chanchalben had executed a will dated 29.11.75 and all the property was bequeathed to him. She also gave tenancy right of the suit premises to the defendant. According to the defendant, since he was residing in the suit premises from 1955 with Chanchalben, he became the lawful tenant of the premises on the death of the original tenant Chanchalben. It is also stated that the plaintiff accepted rent from him even after the death of Chanchalben and so he became the direct tenant of the plaintiff. With regard to the requirement of the premises for bonafide and personal requirements, it is stated that the same is false and concocted.

2. Both the courts below held that the defendant is not the statutory tenant of the suit premises after the death of the original tenant-Chanchalben under the provisions of section 5(11)(c) of the Act of 1947. On the appreciation of evidence, the court rejected the plea of the defendant that he was living with the said Chanchalben since 1955. Exhibits 57 and 58 which are the true copies of the extract from the assessment register in respect of the building situated in Tamboliwad, Baroda belongs to one Mangiben Purshottamdas shows that the defendant was residing with his family in the said premises for last number of years. It was admitted that the defendant was residing in the house of Mangiben along with his family. The Court also found that during the period 1973 to 1977 the defendant did not bother to renew the licence of registration of the shop, but he tried to create documentary evidence in his favour at the time of the death of Chanchalben by getting renewal from 1974 to 1977 on 6.8.1977 i.e. two days prior to death of Chanchalben. The courts below fairly criticized the conduct of the defendant.

3. A legal question which arises for consideration is whether the defendant can be said to be a statutory tenant under the provisions of section 5(1)(c) of the Act of 1947. For the sake of convenience, the relevant provisions are reproduced as under:

"5(1)(c) in relation to premises let for residence, any member of the tenant's family residing with the tenant at the time of or within three months immediately preceding, the death of the tenant as may be decided in default of agreement by the Court, and

(ii) in relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage as the case may be, in the said premises and as may be decided in default of agreement by the Court."

Sub-clause (i)(c) of section 5 clearly makes the distinction with respect to the tenant's letting out the premises for residence and the premises let out for business. In case of the premises let out for residence and a member of the tenant's family is residing with the tenant, at the time of or within 3 months preceding to the death of the tenant, he is treated as a tenant under the Act. Similarly, in case of the premises let out for business, any member of the tenant's family carrying on business, trade or storage, with the tenant in the premises at the time of the death of the tenant as may continue after his death to carry on the business can be said to be the tenant in the said premises. A tenant cannot bequeath his tenancy by will. Reference be made to a decision taken in the case of BHAVARLAL LALCHAND SHAH V. KANALYALAL N INTAWALA, reported in AIR 1986 SC 600. It would have been a different situation if the petitioner had been adopted by the original tenant, Chanchalben. Admittedly he is not a member of the family of the deceased Chanchalben. He was not carrying on business with her. In view of this, I do not find any illegality in the finding arrived at by both the Courts below.

4. In view of the aforesaid, there is no merit in this application and the same is accordingly rejected. Rule discharged. Interim relief is vacated.

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msp.